

REMARKS

Applicant has carefully studied the final Examiner's Action mailed 06/14/2002 and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Objection – 35 U.S.C. 132

The Office has objected to the amendment filed by the applicant on April 15, 2002, citing the improper introduction of new matter. The applicant acknowledges that 35 U.S.C. § 132 states that no amendment shall introduce new matter into the disclosure of the invention. The Office states that the added material, which is not supported by the original disclosure, are: an aramid polymer fiber and a polyethylene terephthalate polymer film material.

Applicant respectfully transverses the objection to new matter. Applicant believes that “an aramid polymer fiber” and “a polyethylene terephthalate polymer film material” are supported by the original disclosure. KEVLAR is the trade name for an aramid polymer fiber produced by DuPont. MYLAR is the trade name for a polyethylene terephthalate polymer film material produced by DuPont. The generic product name for specific polymer trade names can be found at <<<http://www.plasticsusa.com/tradenam.html>>> The introductions of the generic terms for MYLAR and KEVLAR into the specification were required in the previous Office Action, which states, “the use of the trademarks KEVLAR and MYLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.” In response to the Office Action, the generic terms for KEVLAR and MYLAR were introduced into the specification. As such, the Applicant believes that new matter was not been introduced by the amendment dated April 15, 2002.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

Applicant acknowledges the quotation of 35 U.S.C. § 112, first paragraph.

Claims 4, 5 and 16 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office states that the original disclosure doesn't support the polyethylene terephthalate (PET) polymer film material, which is now being used to represent MYLAR and the aramid polymer fiber material, which is now being used to represent KEVLAR, and that the previous reference had been to a high-temperature polyester film material. Applicant respectfully transgresses this rejection because as previously stated, the introduction of the generic terminology for MYLAR and KEVLAR were required by a previous Office Action and such introduction does not constitute new matter. Polyethylene terephthalate polymer film materials and aramid polymer fiber materials are also classified as high-temperature polyester film materials and are therefore covered by the original disclosure of the invention. Additionally, referring to MPEP 2163.07, an amendment to an application to include a dictionary or art recognized definition known at the time of the filing should not be considered new matter. It is the Applicant's belief that the introduction of the generic terms for MYLAR and KEVLAR as known in the art should not constitute new matter. As such, reconsideration and withdrawal of this ground of rejection is requested.

Claim Rejections – 35 U.S.C. § 102

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

Claims 1, 14 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sanai et al. Reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

As to claims 1, 14 and 15, the Office contends that Sanai discloses a luggage container, which has structure to store flammable and combustible liquids, and has secondary containment and which is inherently capable of performing as an aboveground storage tank. The Office cites Fig. 4a of Sanai as comprising an inner primary tank, an outer secondary tank, insulating foam

and a polymer material, which has inherent fire resistant characteristics, the polymer material sandwiched between the foam material and the outer secondary tank. The Office further contends that the container may be used as a tank to provide fuel to a generator.

Applicant respectfully traverses the conclusion by the Office. Claim 1 has been amended to clarify that which is being claimed. The inner primary tank of the present invention is disclosed at paragraph [0017] as being for storing liquid. Storing liquid would require an impermeable material so as to not permit the passage of liquid, gas or other fluid out of the tank. Additionally, the inner primary tank and outer secondary tank are disclosed at paragraph [0034] as being fabricated of carbon steel, which is an impermeable material. As such, proper antecedent basis exists for the presented amendment.

Sanai describes with reference to Fig. 4, a multi-layered structure in which, sequentially, exists an outer pressure mitigation layer (426), a structural supporting layer (428), an inner foamed offset layer (430), and an inner pressure mitigation layer (432). The outer pressure mitigation layer (426) and the inner pressure mitigation layer (432) are further defined at col. 5, lines 47-54 and col. 6, beginning at line 64, as flexible, flow-through sheets, preferably having a relatively thin cross-section. Sanai goes on to describe the mitigation layer as being for the purpose of allowing the detonation products to vent slowly through. The detonation products are described by Sanai at col. 2, lines 50-53, as being gases and the shock wave produced by the explosion. Sanai describes the mitigation layers as being made of a strong, light, high-density material such as Kevlar polymeric wool, fiberglass, manila rope, metal or metallized threads, or a plastic such as polypropylene or nylon to provide a porous sheet. As such, Sanai describes an inner pressure mitigation layer and an outer mitigation layer, which are constructed of materials that provide porosity allowing for venting of the detonation products. As such, the mitigation layers described by Sanai are not impervious to liquids, gases or other fluids.

Additionally, the luggage container taught by Sanai does not have structure capable of storing flammable and combustible liquids. Accordingly, Sanai is not enabling for Applicant's

objective.¹ The luggage container taught by Sanai is constructed to contain detonation products and debris. The luggage carrier as shown in Fig. 2 has hinges, panels, rupture ports and doors and is held together by rivets and metal screws, as such, it is not have structure to contain flammable and combustible liquids and is not inherently capable of performing as an aboveground storage tank.

In addition, the preamble of Applicant's claim limits the claims to an aboveground storage tank. As stated by the Federal Circuit:

No litmus test can be given with respect to when the introductory words of a claim, the preamble, constitute a statement of purpose for a device or are, in themselves, additional structural limitations of a claim. To say that a preamble is a limitation if it gives "meaning to the claim" may merely state the problem rather than lead one to the answer. The effect preamble language should be given can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim.²

Clearly, the stated objectives, advantages, drawings and specification of the present application all focus on an aboveground storage tank and not a luggage container. As Sanai does not describe a tank for containment of combustible liquids, it cannot be cited as prior art under 35 U.S.C. § 102(b).

For the reasons presented above, Applicant believes that amended independent claim 1 recites an invention that is not anticipated by Sanai and is believed to be in condition for allowance.

Claims 14 and 15 are dependent upon claim 1, and are therefore allowable as a matter of law.

¹ See *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1471, 43 USPQ 2d 1481, 1489 (Fed. Cir. 1997) ("In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method." (quoting *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 USPQ 2d 1301, 1304 (Fed. Cir. 1989))).

² *Corning Glass Works v. Sumitomo Electric U.S.A. Inc.*, 9 USPQ 2d 1962, 1966 (Fed. Cir. 1989)

Claim Rejections – 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGarvey in view of Sanai and Silverman et al. Reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

The Office contends that McGarvey discloses an above ground storage tank for flammable liquids having a secondary containment capability, the tank comprising an inner primary tank for storing liquid, an outer secondary tank encasing the primary tank and defining an interstitial space therebetween, an insulating foam material disposed in the interstitial space and a fire resistant material sandwiched between the foam material and the inner primary tank. The Office concludes that McGarvey discloses the present invention except that the fire resistant material is not a polymer and is not sandwiched between the foam material and the outer secondary tank. The Office further states that it would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space between the foam material and the outer secondary tank if it was more important to protect the inner surface of the outer secondary tank from fire and a resulting explosion as would be necessary if fuel has leaked from the inner tank into the interstitial space.

The applicant respectfully traverses the finding of the Office that it would have been obvious to modify McGarvey whereby the position of the fire resistant material is relocated in the interstitial space between the foam material and the outer secondary tank.

McGarvey describes the use of a mixture of hydrate aluminum-iron magnesium silicate and Portland Cement, commonly known as FENDOLITE as a usable thermal barrier material. Due to the properties of Portland Cement, all combinations containing Portland Cement must be applied over metal, or wire lath or other suitable surfaces with an approved bonding agent. Therefore, because the FENDOLITE is a mixture containing Portland Cement, it would need to be applied to the surface of the inner tank (a metal surface) and could not be applied directly to the foam material as suggested by the Office. As such, substantial reconstruction or redesign of

the McGarvey reference would be necessary to relocate the fire resistant material to be positioned between the foam material and the outer secondary tank as claimed by the present invention. Applicant believes that an obvious rejection over McGarvey is not appropriate due to the substantial reconstruction and redesign of McGarvey that would be necessary to arrive at the present invention.

Additionally, the Office states that Sanai teaches a container with a wall structure having a fire resistant composite which fits within an interstitial area comprised of an inner foam (430) and an outer fire resistant polymer material and that Silverman teaches a fire resistant polymer composite having two layers of foam which sandwich a fire resistant polymer film. The Office concludes that it would have been obvious to either replace or reconfigure the composite which lies within the interstitial space to have an inner layer of foam and an outer fire resistant polymer layer in order to optimize the fire resistance of the polymer material as well as the material consistency and thermal efficiency of the foam.

Applicant respectfully traverses the finding of the office that it would be obvious to combine the teachings of McGarvey with that of Sanai and Silverman to arrive at the present invention. As disclosed by McGarvey at col. 5, lines 33-35, with reference to Fig. 5:

Fire-resistant material may, if desired, be sprayed via a nozzle onto the outermost tank walls to form a first layer **250a** which is allowed to harden or cure in situ, covering all such walls.

McGarvey further discloses at col. 2, lines 10-13:

Also, fire resistant material may be applied as a coating to the inner tank surface, the thermal barrier materials located between the coating and the outer tank.

McGarvey's disclosure clearly suggests that the fire resistant material is to be applied to the outer surface of the inner tank by a method analogous to "spraying" or "coating". MYLAR and KEVLAR are fire resistant polymer textile materials. MYLAR and KEVLAR are not applied by spraying or coating of a surface and they are not required to harden or cure in situ. McGarvey suggests the use of a fire resistant material such as FENDOLITE, which is a mixture of VERMICULITE and Portland cement. McGarvey does not suggest or provide any motivation for the use of a fire resistant polymer textile material to provide fire resistance. As such,

Applicant believes it would not be obvious to combine the teachings of McGarvey with that of Sanai and Silverman.

Additionally, Applicant does not believe that a prima facie case of obviousness has been established by the Office. Applicant does not believe that it would be obvious to modify the teachings of McGarvey with that of Sanai and Silverman to arrive at the present invention. Applicant does not believe that the Office has provided any suggestion or motivation to combine the teachings of McGarvey, Sanai and Silverman and it would not have been obvious to combine the references without having access to the application under examination. More specifically, there is no suggestion by McGarvey to replace or reconfigure the composite, which lies in the interstitial space to be a fire-resistant material sandwiched between a foam layer and an outer secondary tank. The Office's suggestion that it would be obvious to replace or reconfigure the composite of the interstitial space of McGarvey with that of Sanai or Silverman relies on the assumption by the Office that one of ordinary skill in the art would have arrived at the invention by trying different alternative structures or materials. Applicant believes that an inappropriate standard of obviousness has been applied.

Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

For the reasons cited above, Applicant believes that amendmend independent claims 1 and 16 are patentable over McGarvey in view of Sanai and Silverman and are in condition for allowance.

Claims 2-15 are dependent upon claim 1, which has been shown to be allowable, and are therefore allowable as a matter of law.

A Notice of Allowance is requested. Applicant is entitled to the *quid pro quo* promised to those who advance the useful arts.


Conclusion

Applicant agrees that the art made of record and not relied upon is not more pertinent than the art made of record and relied upon.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

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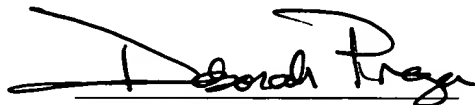
Dated: September 24, 2004

CERTIFICATE OF MAILING

(37 C.F.R. 1.10)

I HEREBY CERTIFY that this Amendment C is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee," Mailing Label No. **EV505917994US**, addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 24, 2004.

Dated: September 24, 2004



Deborah Preza